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ABSTRACT

This report contends that most U.S. history and government textbooks give only cursory attention to the Second Amendment "...the right of the people to keep and bear arms..." to the U.S. Constitution, and most endorse a particular political view of the amendment, rather than providing the necessary background for an informed political discussion of gun control. The report begins by summarizing court decisions on the Second Amendment and then provides examples of what students are being taught about the Second Amendment based on a review of 40 leading U.S. history and civics textbooks. Three appendices are included: (1) Court Decisions Supporting "Militia" Interpretation of the Second Amendment; (2) Review of Textbook Discussions of the Second Amendment; and (3) Excerpts From Textbooks Reviewed. (DB)

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# TEACHING THE BILL OF RIGHTS:

# THE CASE OF THE SECOND AMENDMENT

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## A Critique of Existing Educational Materials and Suggestions for Change

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*"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."*

THE SECOND AMENDMENT
TO THE UNITED STATES CONSTITUTION

**Center to Prevent Handgun Violence**
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*PREFACE*

*November 1991*

As the country prepares to celebrate the Bicentennial of the Bill of Rights this December, our children are facing a crisis in education that has reached epidemic proportions–violence in school. Just one year ago, the journal of the National School Safety Center reported that nearly 3 million criminal incidents occur each year in America's schools, and approximately 282,000 students are attacked in schools every month.

When teenage aggression is combined with easy access to guns, the consequences are disastrous. The National School Safety Council Update headline for October 1991 was: "Today's school crimes are more violent than in years past and involve children at younger ages." Approximately one in twenty high school students carried a firearm at least once during the last month, according to a survey reported by the Centers for Disease Control. How can our nation's schools, once thought to be safe havens, prepare young people for responsible citizenship when so many school age children carry guns?

There are many reasons why gun violence is increasing in our schools. But one simple factor must not be overlooked: the sheer availability of guns in America. Private citizens in the United States possess an estimated 200 million firearms; 60-70 million of these are handguns. Legislative efforts to limit the availability of guns to high risk users as well as to limit the numbers of high risk crime guns have met with the objection of some Americans who claim a constitutionally protected right to the uncontrolled private ownership of guns.

The Founding Fathers' intention in drafting the Second Amendment to the Constitution was to ensure the states' right to maintain a militia as a guard against the possible misuse of a national army. The courts have unanimously held that the right to keep and bear arms is limited to participation in an organized state militia. Yet, the gun lobby, led by the National Rifle Association, has distorted this section of the Bill of Rights to suggest a guarantee to every American of the right to possess firearms, regardless of whether he or she is a member of a state militia.

This Second Amendment myth must be debunked if students are to fully confront the life and death issues of gun control. Because 1991 is the Bicentennial of the Bill of Rights, and because guns in our schools have become a matter of urgent public concern, we think the time has come to call upon textbook publishers to ensure that their discussions of the Second Amendment accurately reflect the courts' interpretation of the Constitution.

Sarah Brady

*Chair, Center to Prevent Handgun Violence*



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The **Center to Prevent Handgun Violence** is a non-profit organization working to combat the epidemic of handgun violence with education, research and legal advocacy. Through its Legal Action Project, the Center participates in constitutional litigation throughout the country involving gun control laws. The Center's Education Department has pioneered educational programs to reduce gun violence in secondary schools across the nation.

This report was written by Judith Bonderman, Staff Attorney for the Center's Legal Action Project. Nancy Gannon and Carolyn Abdullah of the Center's Education Department collected and analyzed the textbooks studied. The Director of the Legal Action Project, Dennis A. Henigan, supervised the study, and Jacqueline Sternberg, Administrative Assistant, contributed to the completion of this report.

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- American Government Today, Marcel Lewinski (Glenview, Illinois: Scott, Foresman & Co., 1982)
- American Civics, Teacher's Edition, William H. Hartley and Willian S. Vincent (Harcourt Brace Jovanovich, Inc., 1992)

# TEACHING THE BILL OF RIGHTS: THE CASE OF THE SECOND AMENDMENT

## A Critique of Existing Educational Materials and Suggestions for Change

The gun control debate of today is a complex, emotionally charged controversy. Political and policy questions central to the debate have often been obscured by proclamations that individuals have a constitutional right to keep guns. Although every single federal court case on the Second Amendment denies that claim, the gun lobby, led by the National Rifle Association, spends literally millions of dollars every year promoting the idea that the Bill of Rights guarantees each individual a right to own a gun in the same sense that it gives each of us freedom of speech, assembly and religion. As a result, the Second Amendment is one of the most often misunderstood amendments in the Bill of Rights.

The celebration this year of the Bicentennial of the Bill of Rights has encouraged educators nationwide to take a greater interest in teaching about the rights guaranteed by the first ten amendments to the Constitution. Leaders in civic education have focused on new and innovative methods of classroom instruction hoping to revitalize student interest in constitutional history. This is a particularly opportune time to clarify the meaning of the various amendments.

To prepare our students for responsible citizenship in the 21st Century, teachers are emphasizing that the Constitution itself defines the American system of government. Within that carefully ordered system of checks and balances, the federal courts, the judicial branch of government, are assigned the role of explaining the meaning of the Constitution. Therefore, when teaching the Bill of Rights, deference must be given to the judicial interpretations of each amendment. Although our students should be encouraged to discuss and debate their reactions to court decisions, they must understand first that the law at any given time is what the courts say it is.

The Center to Prevent Handgun Violence has reviewed a sample of secondary school U.S. History and Government textbooks from the nation's largest educational publishers to examine their treatment of the Second Amendment. Our research shows that almost all textbooks give only the most cursory attention to the Second Amendment. Yet, fully 50% of the books studied ignore the unanimous decisions of the courts in their two to three sentence explanation of the Second Amendment. Whether intentionally or not, these textbooks are endorsing a particular political view of the Second Amendment, rather than providing the necessary background for an informed political discussion of gun control. Believing that a proper understanding of the Second Amendment would free students to tackle the real issues of gun control, we have prepared recommendations for future editions of textbooks and as guidance for educators addressing the meaning of the "right to bear arms."[1]

## WHAT THE COURTS SAY ABOUT THE SECOND AMENDMENT

The text of the Second Amendment reads:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

This Amendment is unique because there is no judicial controversy over its meaning. According to the courts, it does not guarantee each individual the right to own a gun in the same sense that the First Amendment gives each of us freedom of speech, assembly and religion. Whereas the First Amendment addresses freedom of personal belief and expression, the Second Amendment addresses the distribution of military power in society. The United States Supreme Court recognized this in 1939 when it wrote that the "obvious purpose" of the Amendment was "to assure the continuation and render possible the effectiveness" of state militia forces. The Court added: "[The Second Amendment] must be interpreted and applied with that end in view." *United States v. Miller.*[2]

The *Miller* decision, twice reaffirmed by the Supreme Court and followed by a unanimous line of lower court opinions,[3] was based on the language and history of the Second Amendment. The New Jersey Supreme Court discussed the historical context of the Second Amendment in its 1968 opinion in *Burton v. Sills*:

> During the American colonial days there was great fear of military rule; the colonists believed that standing armies were acceptable only in extraordinary circumstances and under control of civil authorities, and that the Militia was the proper organ for defense of the individual States. When the Constitution was adopted, it expressly granted to Congress the power to provide for calling forth the Militia. . . . With their historic distrust of standing armies and the desire that the Militia be protected from federal encroachment, the States quickly obtained the adoption of the second amendment. As the language of the amendment itself indicates it was not framed with individual rights in mind. Thus it refers to the collective right "of the people" to keep and bear arms in connection with "a well-regulated militia." (Emphasis added.)[4]

The *Burton* decision, which upheld the validity of a New Jersey law requiring gun owners to secure permits and licenses for their personal firearms, was affirmed by the U.S. Supreme Court's dismissal of the appeal.

More recently, in *Lewis v. United States,* the Supreme Court held that federal restrictions on the use of firearms "do not trench upon any constitutionally protected liberties," and quoted from *Miller* that the "Second Amendment guarantees no right to

keep and bear a firearm that does not have 'some reasonable relationship to the preservation or efficiency of a well-regulated militia.'"[5]

Following *Miller's* direction, the lower federal courts invariably have upheld laws regulating the private ownership of firearms against Second Amendment challenges. They reject the existence of a broad right to bear arms for purposes other than participation in a state militia. For example, in *Stevens v. United States,* the U.S. Court of Appeals for the Sixth Circuit found that the Second Amendment "applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, [therefore] there can be no serious claim to any express constitutional right of an individual to possess a firearm."[6]

By 1988, it was apparent to the United States Court of Appeals for the Eighth Circuit that the argument for a "fundamental right to keep and bear arms" in the Amendment "has not been the law for at least 100 years." Courts "have analyzed the Second Amendment purely in terms of protecting state militias, rather than individual rights." *United States v. Nelson.*[7]

Moreover, the term "well-regulated militia" has been consistently viewed by the courts as the active, organized militia of each state. The Supreme Court has twice held that the National Guard is the modern day militia. *Perpich v. Dept. of Defense* (1990);[8] *Maryland v. United States* (1965).[9] The National Guard, of course, does not use privately-owned firearms at all, although militiamen were often required to furnish their own arms in the colonial era.

As nothing in the Amendment's language even remotely suggests a constitutional right to keep and bear arms for hunting, self-protection, target shooting or other individual pursuits unrelated to the operation of the state militias, no federal court in history has overturned a gun law on Second Amendment grounds. In fact, the Seventh Circuit Court of Appeals concluded in *Quilici v. Village of Morton Grove,* that "the right to keep and bear handguns is not guaranteed by the second amendment" and upheld a local ban on the possession of handguns.[10] The 1986 federal law banning civilian possession and manufacture or sale of new machine guns has also been upheld against a constitutional challenge. *Farmer v. Higgins.*[11]

## WHAT STUDENTS ARE BEING TAUGHT ABOUT THE SECOND AMENDMENT

The Constitution and the Bill of Rights are studied in many school systems in the 8th grade and again in grades 11 or 12. A review of 40 leading U.S. History and Civics textbooks shows great inconsistency in approach and in recognition of what the courts have said about the Second Amendment.

Half of the sample studied acknowledged the judicial reading of the Amendment by specifically linking the "right to bear arms" clause to the "militia" interpretation. The text **Government in the United States**, MacMillan Publishing Company,[12] is a good example:

> The 2nd Amendment is designed to prevent the national government from taking weapons away from a state militia or the National Guard, as it is called today. This amendment does not prevent Congress from regulating the interstate sale of weapons. Nor does it apply to the states. States are free to regulate the use and sale of firearms as they see fit.

The following example from **People and Our Country**, Holt, Rinehart and Winston, Publishers,[13] also is consistent with court rulings:

> The states have the right to maintain armed militias for their protection. However, the rights of private citizens to own guns can be, and are, regulated by federal and state legislation.

The simple statement from **Civics, Government and Citizenship**, Allyn and Bacon, Inc.,[14] is also accurate:

> The federal government cannot deny the states the right to keep an armed militia.

Another approach can be to tie the historically significant notion of bearing arms for militia service to the gun control debate of today. For example, the more extensive discussion in **Magruder's American Government**, Allyn and Bacon, Inc.,[15] introduces the gun control debate with an explanation of the judicial decisions:

> Read [the words of the Second Amendment] very carefully–because the 2nd Amendment is a very widely misunderstood part of the Bill of Rights. Its words were added to the Constitution solely to protect the right of each State to keep a militia. It was intended to preserve the concept of the citizen-soldier–the "minuteman," as its text clearly suggests. It does not guarantee to any person the "right to keep and bear arms" free from any restriction by government; nor was it written to do so.
>
> The Amendment has no real significance today–except for its propaganda weight in arguments over gun control.

(See Appendix C for text pages.)

A particularly interesting presentation, which again is consistent with established judicial precedent, is made in **American Government Today**, Scott, Foresman & Company:[16]

> Like the rest of the Bill of Rights, Amendment 2 was written in 1789. The memory of the Revolution was still fresh. The amendment writers recognized that the struggle with England had been won in large measure by farmers and merchants

> armed with their own weapons. They wanted to make sure that if the nation's security were again threatened by a tyrannical central government, the states would be able to defend themselves. In writing the amendment, they were trying to prohibit the central government from interfering with the state militia (citizen soldiers).
>
> The Supreme Court has consistently held that Amendment 2 refers to a right to bear arms in a militia. It has not said that Americans have an unlimited right to bear arms to hunt, defend themselves, or to practice target shooting. Many people have questioned this interpretation. They challenge any attempt to control guns. . . .

(See Appendix C for text pages.)

In contrast to these examples, fully 50% of the texts reviewed were incorrect or ambiguous in their presentations of the Second Amendment. Several imply that there is a broad right to bear arms. They omit the key factor that the right to be armed continues to exist only in connection with militia service.

For example, **American Civics: Constitution Edition**, Harcourt Brace Jovanovich, Inc.,[17] states unequivocally:

> The Second Amendment to the Constitution guarantees Americans the right to bear arms. The government cannot forbid Americans to own weapons, such as handguns and rifles.

The text also introduces the topic of the present day gun control debate:

> Some people have demanded that guns be regulated. They say that gun control laws would lower the crime rate. Other people argue that the Second Amendment gives them the right to own weapons. They say that this amendment prevents the government from passing laws limiting that right.

The first proposition–"the Second Amendment to the Constitution guarantees Americans the right to bear arms"–is directly contrary to the federal court decisions in *Quilici v. Village of Morton Grove,* upholding a local ban on the possession of handguns against a Second Amendment challenge, and *Farmer v. Higgins,* upholding the federal ban on civilian possession of new machine guns. The second paragraph suggests that there is a public debate about the meaning of the Second Amendment without acknowledging that the federal courts have been unanimous in their interpretation. Educational materials like these perpetuate the myth that gun control laws are prohibited by the Second Amendment.

Our students would be better served by understanding that the gun control debate involves political and policy decisions. The text of **American Government Today**, discussed above, makes this important point:

> In general, the Supreme Court has not found any constitutional restraints on gun-control laws. The subject is, therefore, one that is left to Congress.

Other textbooks include statements that are inconsistent with the court decisions. For example, **You the Citizen**, Benefic Press,[18] explains the Second Amendment like this:

> People also have the right to keep and bear arms. States may register and control guns, but the federal government cannot stop people from having them.

**USA: The Unfolding Story of America**, AMSCO School Publications, Inc.,[19] states:

> This amendment concerns Americans' right to bear arms (own weapons). At the time, many Americans needed guns for hunting and for personal protection. Some others belonged to a civilian militia and needed weapons to defend communities. (Emphasis in original.)

And, **United States History**, Holt, Rinehart and Winston,[20] simply declares:

> Citizens have the right to keep weapons.

Although some of these texts show a recognition that states may have licensing regulations or rules about owning and using weapons, this does not compensate for the failure to link the right to service in the militia, nor for the assertion that the Constitution guarantees an individual right to bear arms.

Other textbooks have ambiguous and/or contradictory presentations. For example, **Civics: Citizens and Society**, McGraw-Hill,[21] appears to present a balanced presentation of the Second Amendment "debate":

> The Second Amendment has been the subject of much argument. . . .
>
> A **militia** is an army of citizens. In time of peace, its members are civilians. But they have weapons ready in case they are called upon to defend their government. Each of the thirteen colonies had its own militia. The militias served an important role in the American Revolution. Today, the nearest thing to state militias are the units of the National Guard.

> Can the federal or state governments control or limit the ownership of guns? Some people argue that the Second Amendment gives all people an unlimited right to keep arms such as rifles and pistols. . . .
>
> Other people argue that the Second Amendment was not meant to keep the government from making such regulations. They say that the amendment was meant to protect the right of state governments to keep a militia. They say that the amendment has little meaning today.

Unfortunately, this text misleads its readers by failing to indicate that the "debate" is political, not legal. The federal courts have already unanimously determined what the amendment means.

The 1992 "Freedom Edition" of **American Civics**, Harcourt Brace Jovanovich, Inc.,[22] focuses on the importance of guns in American history and the dark side of gun ownership today. (See Appendix C for text pages.) It discusses the Morton Grove handgun ban and accurately states that:

> [E]very Supreme Court and federal decision involving the amendment has held that the amendment does not guarantee the right of individuals to own or to carry arms. Thus, gun control laws are constitutional.

Yet, this same textbook also states, contrary to the *Morton Grove* decision, that:

> The Second Amendment to the Constitution guarantees Americans the right to bear arms. The government cannot forbid Americans to own weapons, such as handguns and rifles.[23]

In yet another section of the book, this text asserts that the Second Amendment gives each individual the right to keep weapons to resist a tyrannical government.

> The right of states to have a militia (National Guard) is guaranteed. The right of citizens to keep weapons to resist a tyrannical government is also protected.[24]

This statement reflects the "insurrectionist" theory which the gun lobby is hoping to popularize even though it has never been accepted by a court and is contrary to the general judicial consensus. According to this theory, there is a constitutional right of each citizen to engage in armed insurrection against the government whenever the citizen believes the government has become "tyrannical." Several of the texts suggest a constitutional protection for private armies unconnected to any government. The Supreme Court has ruled that the Constitution grants no right to participate in private armed military organizations. *Presser v. Illinois*.[25] See also *Vietnamese Fishermen's Assoc. v. KKK*.[26]

Another example of a text which includes contradictory views of the Second Amendment in different sections of the book is **American Spirit, A History of the United States**, Allyn and Bacon, Inc. The 1985 edition, written by Professor Clarence L. Ver Steeg, includes a chart showing as one of the individual rights in the Bill of Rights the following:

> The right to keep and carry firearms for self-protection.[27]

This statement is contrary to judicial interpretation of the amendment. However, another chart later in the book explains the Second Amendment as follows:

> The states have the right to maintain national guard units.[28]

This statement is consistent with judicial rulings. The same author also accurately represented the judicial interpretation of the Second Amendment in an earlier textbook, **A People and A Nation**, Harper & Row Publishers, Inc., as follows:

> Amendment II, ensuring the right of the people to bear arms, connects this right to the maintenance of a militia. Various restrictions have been placed on this right; for example, some states require gun licenses and restrict the carrying of concealed weapons.[29]

These inconsistencies and ambiguities may be the result of the textbook writing process. They also reflect the widespread public misunderstanding of the Second Amendment. Unless they are corrected, another generation of students will be misled about a critical public issue.

## RECOMMENDATION

Whether textbooks should include discussions of the current gun control debate depends on the preferences of the writers. If it is covered in the curriculum, the Second Amendment should not be used to indoctrinate students to one side or the other of the issue. A simple statement that the Second Amendment has been held by the courts to guarantee "a right to be armed only in connection with service in a state militia" and that courts have repeatedly rejected arguments that the Second Amendment protects the ownership of guns for personal uses would accurately reflect the state of the law.

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## NOTES

1. Special Bicentennial projects and competitions have resulted in literally hundreds of new non-textbook supplemental teaching materials such as videos, essays, lesson plans, and debate outlines designed for use with middle and high school students. The Bicentennial projects are intended to supplement the superficial treatment of the Constitution and Bill of Rights in American history and civic textbooks distributed by the large commercial publishing companies. Whether or not concerned educators can sustain the effort needed to incorporate these materials into the curriculum, teachers undoubtedly will continue to rely on the standard textbooks for the bulk of their daily assignments.

2. 307 U.S. 174, 178 (1939).

3. A list of court decisions supporting the militia interpretation of the Second Amendment is attached.

4. 248 A.2d 521, 526 (N.J.1968), appeal dismissed, 394 U.S. 812 (1969).

5. 445 U.S. 55, 65 n. 8 (1980).

6. 440 F.2d 144, 149 (6th Cir. 1971).

7. 859 F.2d 1318, 1320.

8. 110 S.Ct. 2418, 2426.

9. 381 U.S. 41, 46.

10. 695 F.2d 261, 270 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983).

11. 907 F.2d 1041 (11th Cir. 1990), cert. denied, 111 S.Ct. 753 (1991).

12. Richard C. Remy, 1984, p. 73.

13. Norman Risjord and Terry Haywoode, 1982, p. 156.

14. 1986, p. 536.

15. William McClenaghan, 1984, pp. 135-6.

16. Marcel Lewinski, 1982, pp. 157-9.

17. William H. Hartley and William S. Vincent, 1987, p. 79.

18. Robert Carter and John M. Richards, 1980, p. 248.

19. Philip L. Groisser and Sol Levine, 1987, p. 119.

20. Jerome R. Reich and Edward L. Biller, Annotated Teachers' Edition, New York, New York: 1988, p. 197.

21. 2nd Edition, Allan O. Kownslar and Terry Smart, 1983, p. 320.

22. Teacher's Edition, William H. Hartley and William S. Vincent, 1992, pp. 128-129.

23. 1992, p. 79. This text was also in the earlier 1987 "Constitution Edition" of this book.

24. p. 67. Several other textbooks by the same publisher contain the identical language: Triumph of the American Nation, Teacher's Edition, Lewis Paul Todd and Merle Curti, Harcourt Brace Jovanovich, Inc., 1990, p. 207; American Government, The Republic in Action, Harcourt Brace Jovanovich, Inc., 1986.

25. 116 U.S. 252, 265 (1886).

26. 543 F. Supp. 198 (S.D. Tex. 1982).

27. Clarence L. Ver Steeg, 1985, p. 192.

28. Id. at p. 737.

29. Clarence L. Ver Steeg and Richard Hofstadter, 1981, p. 129.

# Appendix

**COURT DECISIONS SUPPORTING THE MILITIA INTERPRETATION OF THE SECOND AMENDMENT**

U.S. SUPREME COURT

*U.S. v. Miller,* 307 U.S. 174 (1939)

*Lewis v. United States,* 445 U.S. 55 (1980)

U.S. COURTS OF APPEALS

*U.S. v. Nelsen,* 859 F.2d 1318 (8th Cir. 1988)

*U.S. v. Cody,* 460 F.2d 34 (8th Cir. 1972)

*U.S. v. Decker,* 446 F.2d 164 (8th Cir. 1971)

*U.S. v. Synnes,* 438 F.2d 764 (8th Cir. 1971), vacated on other grounds, 404 U.S. 1009 (1972)

*U.S. v. Oakes,* 564 F.2d 384 (10th Cir. 1977), cert. denied, 435 U.S. 926 (1978)

*U.S. v. Swinton,* 521 F.2d 1255 (10th Cir. 1975)

*U.S. v. Johnson,* 497 F.2d 548 (4th Cir. 1974)

*U.S. v. Johnson, Jr.,* 441 F.2d 1134 (5th Cir. 1971)

*Quilici v. Village of Morton Grove,* 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983)

*U.S. v. McCutcheon,* 446 F.2d 133 (7th Cir. 1971)

*Stevens v. United States,* 440 F.2d 144 (6th Cir. 1971)

*U.S. v. Day,* 476 F.2d 562 (6th Cir. 1973)

*U.S. v. Warin,* 530 F.2d 103 (6th Cir. 1976), cert. denied, 426 U.S. 948 (1976)

*U.S. v. Tot,* 131 F.2d 261 (3rd Cir. 1942), rev'd on other grounds, 319 U.S. 463 (1943)

*U.S. v. Graves,* 554 F.2d 65 (3rd Cir. 1977)

*Cases v. United States,* 131 F.2d 916 (1st Cir. 1942), cert. denied sub nom., *Velazquez v. U.S.,* 319 U.S. 770 (1943)

**COURT DECISIONS SUPPORTING THE MILITIA INTERPRETATION OF THE SECOND AMENDMENT**

## U.S. FEDERAL DISTRICT COURTS

*U.S. v. Gross,* 313 F.Supp. 1330 (S.D. Ind. 1970), aff'd on other grounds, 451 F.2d 1355 (7th Cir. 1971)

*U.S. v. Kraase,* 340 F.Supp. 147 (E.D. Wis. 1972)

*Thompson v. Dereta,* 549 F.Supp. 297 (D. Utah 1982)

*Vietnamese Fishermen's Assoc. v. KKK,* 543 F.Supp. 198 (S.D. Tex. 1982)

*U.S. v. Kozerski,* 518 F.Supp. 1082 (D.N.H.1981), cert. denied, 469 U.S. 842 (1984)

## STATE COURTS

*Burton v. Sills,* 248 A.2d 521 (N.J.1968); appeal dismissed, 394 U.S. 812 (1969)

*In Re Atkinson,* 291 N.W.2d 396 (Minn. 1980)

*City of East Cleveland v. Scales,* 460 N.E.2d 1126 (Ohio App. 1983)

*Commonwealth v. Davis,* 343 N.E.2d 847 (Mass. 1976)

*Masters v. State,* 653 S.W.2d 944 (Tex.App.3 1983)

*U.S. v. Sandidge,* 520 A.2d 1057 (D.C. 1987); cert. denied, 108 S.Ct. 193 (1987)

*State v. Fennell,* 382 S.E.2d 231 (N.C. 1989)

*Kalodimos v. Village of Morton Grove,* 470 N.E.2d 266 (Ill. 1984)

*State v. Vlacil,* 645 P.2d 677 (Utah 1982)

*Harris v. State,* 432 P.2d 929 (Nev. 1967)

*Salina v. Blakesley,* 83 P. 619 (Kan. 1905)

# Appendix

# REVIEW OF TEXTBOOK DISCUSSIONS OF THE SECOND AMENDMENT

**A. Extended discussions of the Second Amendment consistent with court rulings:**

1. Magruder's American Government, William McClenaghan (Allyn and Bacon, Inc., 1984)

> Read [the words of the Second Amendment] very carefully–because the 2nd Amendment is a very widely misunderstood part of the Bill of Rights. Its words were added to the Constitution solely to protect the right of each State to keep a militia. It was intended to preserve the concept of the citizen-soldier–the "minuteman," as its text clearly suggests. It does not guarantee to any person the "right to keep and bear arms" free from any restriction by government; nor was it written to do so.
>
> The Amendment has no real significance today–except for its propaganda weight in arguments over gun control. (pp. 135-136)

2. American Government Today, Marcel Lewinski (Glenview, Illinois: Scott, Foresman & Co., 1982)

> Like the rest of the Bill of Rights, Amendment 2 was written in 1789. The memory of the Revolution was still fresh. The amendment writers recognized that the struggle with England had been won in large measure by farmers and merchants armed with their own weapons. They wanted to make sure that if the nation's security were again threatened by a tyrannical central government, the states would be able to defend themselves. In writing the amendment, they were trying to prohibit the central government from interfering with the state militia (citizen soldiers).
>
> The Supreme Court has consistently held that Amendment 2 refers to a right to bear arms in a militia. It has not said that Americans have an unlimited right to bear arms to hunt, defend themselves, or to practice target shooting. Many people have questioned this interpretation. They challenge any attempt to control guns. . . . (pp. 157-159)

**B. Brief discussions of the Second Amendment consistent with court rulings:**

1. United States History: Presidential Edition, David C. King, et al. (Menlo Park, California: Addison-Wesley Publishing Co., Inc. 1986)

> For the purpose of maintaining a state militia, citizens may keep and bear arms. However, Congress has prohibited the possession of certain firearms such as sawed-off shotguns and machine guns. (p. 792)

2. Civics, Government and Citizenship (Allyn and Bacon, Inc., 1986)

> The federal government cannot deny the states the right to keep an armed militia. (p. 536)

3. The American Pageant: A History of the Republic, 9th ed., Thomas A. Bailey and David M. Kennedy (Lexington, Massachusetts: D.C. Heath and Company, 1991)

> A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms [i.e. for military purposes] shall not be infringed.
>
> [footnote: The courts, with "militia" in mind, have consistently held that the "right" to bear arms is a limited one.]

4. A People and A Nation, Clarence L. Ver Steeg and Richard Hofstadter (Harper & Row Publishers, Inc., 1981)

> Amendment II, ensuring the right of the people to bear arms, connects this right to the maintenance of a militia. Various restrictions have been placed on this right; for example, some states require gun licenses and restrict the carrying of concealed weapons. (p. 129)

5. People and Our Country, Norman Risjord and Terry Haywoode (New York, New York: Holt, Rinehart and Winston, 1982)

> The states have the right to maintain armed militias for their protection. However, the rights of private citizens to own guns can be, and are, regulated by federal and state legislation. (p. 156)

6. **A People and a Nation: A History of the United States**, 2nd ed., Mary Beth Norton, et al. (Boston, Massachusetts: Houghton Mifflin Co., 1988)

> The [second and third amendments] arose directly from the former colonists fear of standing armies as a threat to freedom. The second amendment guaranteed the people's right "to keep and bear arms" because of the need for a "well regulated Militia" (p. 118)

7. **These United States**, James P. Shenton, et al., (Boston, Massachusetts: Houghton Mifflin Co., 1981)

> In the late 1700s the militia was the country's chief defense. (p. 729)

8. **Government in the United States**, Richard C. Remy (Glencoe Publishing Co., 1990)

> The 2nd Amendment is designed to prevent the national government from taking weapons away from a state militia or the National Guard, as it is called today. This amendment does not prevent Congress from regulating the interstate sale of weapons. Nor does it apply to the states. States are free to regulate the use and sale of firearms as they see fit. (p. 73)

9. **A Proud Nation**, Teachers' Edition, Ernest R. May (Evanston, Illinois: McDougal, Littell & Co., 1985)

> A citizen's right to bear arms is related to the maintenance of a militia. Various restrictions have been placed on this right, including the requirement of gun licenses and the restricted right to carry concealed weapons. (p. 261)

10. **American Government**, 2nd ed., Allan O. Kownslar and Terry L. Smart (McGraw-Hill Book Co. 1983)

> The amendment links [the right of the people to keep and bear arms] with the need of a free state to keep a militia, or organized body of citizen soldiers. Because of this linking, Amendment II is generally held to apply to "the people" collectively rather than as individuals. The amendment is also regarded as applying only to the national government and as not limiting in any way the right of the states to restrict the ownership of weapons. (p. 243)

11. **The American People, A History to 1877**, Ernest R. May and Winthrop D. Jordan (McDougal, Littell & Co., 1989)

> A citizen's right to bear arms is related to the maintenance of a militia. Various restrictions have been placed on this right, including the requirement of gun licenses and the restricted right to carry concealed weapons. (p. 303)

12. **Faces of America: A History of the United States**, Roland Smith, et al. (J.B. Lippincott Co., of Harper & Collins Publishers, Inc., 1982)

> Because people have the right to protect themselves by serving in state militias, civilians have the right to keep and carry weapons. Congress, however, has passed laws regulating the manufacture, sale, and use of weapons. (p. 286)

13. **America! America!** 2nd ed., (Glenview, Illinois: Scott, Foresman & Co., 1982)

> The people have the right to protect themselves by serving as armed citizens (militia), and Congress cannot stop them. However, Congress has restricted the possession of particular weapons. (p. 231)

14. **The American Dream**, 2nd ed., Lew Smith, (Glenview, Illinois: Scott, Foresman & Co., 1983)

> The people have the right to protect themselves by serving as armed citizens (militia), and Congress cannot stop them. However, Congress has restricted the possession of particular weapons. For example, private ownership of sawed-off shotguns, concealed weapons, and machine guns is prohibited by federal law. (p. 112)

15. **Life and Liberty**, (Glenview, Illinois: Scott, Foresman & Co., 1987)

> The people have the right to protect themselves by serving as armed citizens (militia), and Congress cannot stop them. However, Congress has restricted possession of particular weapons, such as sawed-off shotguns, concealed weapons, and machine guns. (p. 165)

16. **The Americans, The History of a People and a Nation**, Winthrop D. Jordan et al., (Evanston, Illinois: McDougal, Littell & Co., 1988)

> A citizen's right to bear arms is related to the maintenance of a militia. Various restrictions have been placed on this right,

including the requirement of gun licenses and the restricted right to carry concealed weapons. (p. 186)

17. Land of Liberty, A United States History, Teacher's Edition, James J. Rawls and Philip Weeks (New York, New York: Holt, Rinehart and Winston, 1985)

    The states have the right to maintain armed militias for their protection. However, the rights of private citizens to own guns can be, and are, regulated by federal and state legislation. (p. 182)

18. History of the American People, Teacher's Edition, Norman K. Risjord, (New York, New York: Holt, Rinehart and Winston, 1986)

    The states have the right to maintain armed militias for their protection. However, the rights of private citizens to own guns can be, and are, regulated by federal and state legislation. (p. 140)

**C. Discussions of the Second Amendment contrary to court rulings:**

1. USA: The Unfolding Story of America, Philip L. Groisser and Sol Levine (New York, New York: AMSCO School Publications, Inc., 1987)

    This amendment concerns Americans' right to bear arms (own weapons). At the time, many Americans needed guns for hunting and for personal protection. Some others belonged to a civilian militia and needed weapons to defend communities. (p. 119)

2. You the Citizen, Robert Carter and John M. Richards (Chicago, Illinois: Benefic Press, 1980)

    People also have the right to keep and bear arms. States may register and control guns, but the federal government cannot stop people from having them. (p. 248)

3. Our Land, Our Time, Annotated Teacher's Edition, Joseph R. Conlin (Chicago, Illinois: Coronado Publishers, Inc., 1985)

    This guarantee, like others in the Bill of Rights, is a limited right. It means more than the citizens' right to possess firearms. It protects their right and duty to serve in the armed forces.

This amendment also prevents the national government from absolutely prohibiting the ownership of firearms by citizens. The federal government has, however, passed laws to exercise some control over the interstate commerce in guns. (p. 180)

4. **American Civics: Constitution Edition** (Harcourt Brace Jovanovich, Inc., 1987)

   The Second Amendment to the Constitution guarantees Americans the **right to bear arms.** The government cannot forbid Americans to own weapons, such as handguns and rifles. (p. 79)

5. **From Sea to Shining Sea: A History of the United States**, 3rd ed., Bernard Weisberger (McGraw-Hill Book Co. 1982)

   Protects our right to keep and bear arms. (p. 189)

6. **Land of Promise: A History of the United States**, Carol Berkin and Leonard Wood (Glenview, Illinois: Scott, Foresman & Co. 1983)

   The Second Amendment guarantees the right of the people to "keep and bear arms." People of the revolutionary generation did not want to see the citizens disarmed, especially when the government had been given the right to create a permanent army. (p. 207)

7. **Civics for Americans**, 2nd ed., Patrick and Remy (Glenview, Illinois: Scott, Foresman & Co. 1989)

   The Second Amendment gives citizens the right to bear arms. The government cannot pass a law that stops people from having weapons. It can restrict the possession of particular weapons. For example, it is against the law to own sawed-off shotguns. (p. 96)

   People disagree as to whether the Second Amendment means that Congress and the states cannot make it illegal for to own pistols. (p. 92)

8. **American Adventures**, Teaching Guide. New Edition. (Austin, Texas: Steck-Vaughn Co., 1983)

   The Second Amendment says that people have the right to "keep and bear arms." (p. 119)

9. United States History, Annotated Teachers' Edition, Jerome R. Reich and Edward L. Biller (New York, New York: Holt, Rinehart and Winston, 1988)

> Citizens have the right to keep weapons. (p.197)

10. America Is, 2nd ed., Teacher's Annotated Edition, Henry N. Drewry, et al. (Columbus, Ohio: Charles E. Merrill Publishing Co., 1984)

> The right to keep and bear arms is not free from government restriction. The federal government and the states can and do regulate the possession and use of firearms, such as requiring the licensing of guns and prohibiting the carrying of concealed weapons. (p. 740)

This text assumes an individual right and indicates that there are some restrictions by state and federal government. It does not make the link to the militia.

**D. Ambiguous or contradictory discussions of the Second Amendment:**

1. American Government: We Are One (Chicago, Illinois: Coronado Publishers, Inc., 1987)

The text is confusing because it incorrectly states that there is an individual "right to keep and bear arms."

> This guarantee, like others in the Bill of Rights, is a limited right. It means more than the citizens' right to possess firearms. It protects their right and duty to serve in the armed forces.
>
> This amendment also prevents the national government from absolutely prohibiting the ownership of firearms by citizens. The federal government has, however, passed laws to exercise some control over the interstate commerce in guns.

Yet, in addition to the above-quoted passage, the text accurately states that the Second Amendment refers to the concept of "minutemen" and "has little relevance to the Twentieth Century." The text cites *U.S. v. Miller* and also notes that states have the right to regulate gun ownership and use. (p. 171)

2. **The United States: A History of the Republic**, 5th ed., James West Davidson and Mark H. Lytle (Prentice-Hall, Inc., 1990)

The 1990 edition indicates that there is an individual right to keep and bear arms.

> The Second Amendment guarantees the right of people to keep and bear arms. (p. 172)

The 1981 edition had properly linked this right to the existence of the state militia as follows:

> The Second Amendment guarantees the right of people to keep and bear arms and thus assured the continued existence of local and state militias. (p. 167)

Both editions, however, have the proper militia interpretation next to the actual wording of the Second Amendment.

> This amendment guarantees the right of a state militia to keep weapons. Courts have generally ruled that government can regulate the ownership of weapons by private citizens.

3. **Civics: Citizens and Society**, 2nd ed., Allan O. Kownslar and Terry Smart (McGraw-Hill, 1983)

This text gives arguments from both sides, accurately portraying the militia interpretation. However, it does not indicate that the courts have already determined what the amendment means.

> The Second Amendment has been the subject of much argument. . . .
>
> A militia is an army of citizens. In time of peace, its members are civilians. But they have weapons ready in case they are called upon to defend their government. Each of the thirteen colonies had its own militia. The militias served an important role in the American Revolution. Today, the nearest thing to state militias are the units of the National Guard.
>
> Can the federal or state governments control or limit the ownership of guns? Some people argue that the Second Amendment gives all people an unlimited right to keep arms such as rifles and pistols. . . .
>
> Other people argue that the Second Amendment was not meant to keep the government from making such regulations. They say that the amendment was meant to protect the right of state

governments to keep a militia. They say that the amendment has little meaning today. (p. 320)

4. **American Spirit, A History of the United States**, Clarence L. Ver Steeg (Allyn and Bacon, Inc., 1985)

   The text includes as one of the individual rights in the Bill of Rights the following:

   > The right to keep and carry firearms for self-protection. (p. 192)

   However, it later explains the Second Amendment as "The states have the right to maintain national guard units." (p. 737)

* * *

The following texts suggest a right of individual citizens to engage in armed insurrection against the government whenever the citizen believes that the government has become "tyrannical." This "insurrectionist" view of the Second Amendment has never been accepted by the courts. Several of the texts suggest, contrary to court opinion, that the Constitution protects individual participation in private armies unconnected to any government.

5. **The American People: A History**, Annotated Teacher's Edition, Pauline Maier (Lexington Massachusetts: D.C. Heath and Co., 1986)

   This book correctly states that the Second Amendment:

   > Allows each state to keep and arm a militia. The rights of individual citizens to keep weapons are regulated by federal and state laws. (p. 227)

   However, it also suggests a right to arm private military forces, unconnected to the government:

   > Because the people have a right to protect themselves with a militia, Congress cannot stop people from carrying firearms for military purposes. (p. 752)

6. **America Past and Present**, (Social Studies) Joan Schreiber et al., (Glenview, Illinois: Scott, Foresman & Co., 1983)

   > The people have the right to protect themselves by serving as armed citizens, subject to laws of the states. (p. 174)

7. **Our American Heritage**, Herbert J. Bass, et al. (Morristown, New Jersey: Silver Burdett Co., 1983)

> Are handguns or rifles of greater value to a militia? If you were a dictator, what would you do about privately owned firearms? Why? (p. 186)

8. **Triumph of the American Nation**, Teacher's Edition, Lewis Paul Todd and Merle Curti (Harcourt Brace Jovanovich, Inc., 1990)

> The purpose of this amendment was to prevent Congress from denying states the right to have a militia (or National Guard) of armed citizens. It also protected Americans' right to keep weapons in order to resist a tyrannical government. However, Congress and many states have regulated the ownership and use of weapons by citizens through gun control legislation. (p. 207)

9. **American Government, The Republic in Action** (Harcourt Brace Jovanovich, Inc., 1986)

> The purpose of this amendment was to prevent Congress from denying states the right to have a militia (or National Guard) of armed citizens. It also protected Americans' right to keep weapons in order to resist a tyrannical government. However, Congress and many states have regulated the ownership and use of weapons by citizens through gun control legislation.

10. **American Civics**, Teacher's Edition, William H. Hartley and William S. Vincent (Harcourt Brace Jovanovich, Inc., 1992)

> The right of states to have a militia (National Guard) is guaranteed. The right of citizens to keep weapons to resist a tyrannical government is also protected. (p. 67)

# Appendix

# Magruder's AMERICAN GOVERNMENT

1984

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Boston Rockleigh NJ Atlanta
Dallas Sacramento Warrensburg MO
London Sydney Toronto



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**A CASE IN POINT**

# INTERNATIONAL HUMAN RIGHTS

Everyone has the right to life, liberty and security of person . . . No one shall be held in slavery or servitude . . . no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment . . . all are equal before the law . . . no one shall be subjected to arbitrary arrest, detention or exile . . . no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation . . . everyone has the right to leave any country, including his own, and to return to his country . . . everyone has the right to freedom of thought, conscience and religion . . . everyone has the right to peaceful assembly and association . . . everyone, without any discrimination, has the right to equal pay for equal work . . . everyone has the right to rest and leisure . . . everyone has the right to an education.

These several statements almost certainly sound familiar to most Americans. Many of them can be found in the Bill of Rights or in other parts of the Constitution of the United States. They come, however, from the Universal Declaration of Human Rights, which was adopted unanimously by the United Nations General Assembly in 1948.

Many Americans believe that the civil rights guarantees in our Constitution are uniquely American. In fact, we share a dedication to individual rights with a large segment of the world's peoples. Through much of this century, the belief that basic rights should be guaranteed to all people, everywhere, has spread through much of the world. Many of the newer nations have included parts of the Universal Declaration in their own constitutions.

Since 1948, the UN has adopted several Covenants (agreements) to spell out the general rights listed in the Declaration. The major ones are the Covenants on Racial Discrimination (1965), on Economic, Social, and Cultural Rights (1966), and on Civil and Political Rights (1967). Together with the Declaration, they are often called the International Bill of Rights.

To 1983, some 70 of the UN's 157 members had ratified one or more of the Covenants. They have agreed to honor them, and to submit periodic reports on their compliance with them to the UN's Commission on Human Rights.

**1.** Which of the rights we have listed from the Universal Declaration are also found in our Constitution? Which are not?
**2.** Why have more than half of the members not ratified any of the Covenants? Why has the United States not done so?

**Right to Keep and Bear Arms**

The 2nd Amendment reads this way:

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Read those words again, and very carefully—because the 2nd Amendment is a very widely misunderstood part of the Bill of Rights. Its words were added to the Constitution *solely* to pro-

A billboard in Florida reminds people of the penalty for illegal possession of handguns. *Inset:* Some contend that such laws deny them 2nd-Amendment rights.

tect the right of each State to keep a militia. It was intended to preserve the concept of the citizen-solider—the "minuteman," as its text clearly suggests. It does not guarantee to any person the "right to keep and bear arms" free from any restriction by government; nor was it written to do so.

The Amendment has no real significance today—*except* for its propaganda weight in arguments over gun control.

The only important Supreme Court case dealing with the meaning of the 2nd Amendment was decided more than 40 years ago. In *United States* v. *Miller*, 1939, the Court upheld the constitutionality of a section of the National Firearms Act of 1934. That section of the law makes it a crime for any person to ship a sawed-off shotgun, a machine gun, or a silencer across State lines unless he or she has registered the weapon with the Treasury Department and paid a $200 tax on it. The Court said that it could find no reasonable relationship between the sawed-off shotgun involved in the case and "the preservation and efficiency of a well regulated militia."

The Court has never found the 2nd Amendment to be within the meaning of the 14th Amendment's Due Process Clause. Thus, each of the States may limit the right to keep and bear arms—and all of them do, in various ways.

Courtesy of *The Chicago Tribune*—New York News Syndicate, Inc.

"What we need is a strict club control law!"

## ☑ FOR REVIEW

1. Why does the 13th Amendment not forbid *all* forms of involuntary servitude?
2. Why is Section 2 of the Amendment so important?

# AMERICAN GOVERNMENT TODAY

Marcel Lewinski

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**Section Review 3**

1. List the five freedoms guaranteed by Amendment 1.
2. Is freedom of speech absolute? Explain your answer, citing Supreme Court decisions.
3. Under what conditions can freedom of the press be legally restricted?
4. How and when may freedom of assembly be limited?

## 4 AMENDMENT 2 PROTECTS THE RIGHT TO BEAR ARMS

Amendment 2 is probably the most misunderstood of the ten that make up the Bill of Rights. It provides, "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." The courts have ruled on its meaning several times.

### Amendment 2 protects the state militia

Like the rest of the Bill of Rights, Amendment 2 was written in 1789. The memory of the Revolution was still fresh. The amendment writers recognized that the struggle with England had been won in large measure by farmers and merchants armed with their own weapons. They wanted to make sure that if the nation's security were again threatened by a tyrannical central government, the states would be able to defend themselves. In writing the amendment, they were trying to prohibit the central government from interfering with the state *militia* (citizen soldiers).

The Supreme Court has consistently held that Amendment 2 refers to a right to bear arms in a militia. It has not said that Americans have an unlimited right to bear arms to hunt, defend themselves, or to practice target shooting. Many people have questioned this interpretation. They challenge any attempt to control guns.

One court case goes back to 1879. Herman Presser, a German immigrant, formed a club that instructed its members on the nation's laws to prepare them for citizenship. In addition, it offered "military and gymnastic exercises."

On September 24, 1879, Presser and four hundred armed members of his group marched in a parade drill on the streets of Chicago. They were arrested and convicted under an Illinois law forbidding militia units to be formed without state approval.

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When the case reached the Supreme Court seven years later, it upheld the convictions. "Military organization and military drill and parade under arms," ruled the Court, "are subjects especially under the control of the state and national governments. They cannot be claimed as a right independent of law." Thus, Amendment 2 did not protect military groups other than those formed by the government.

### The Court has upheld gun-control laws

In 1934, Congress passed the National Firearms Act. It required registration and a $200 transfer tax on sawed-off shotguns and fully automatic weapons. Another gun-control law, passed four years later, said that interstate dealers must be licensed. It also banned the shipment of weapons to or from felons, fugitives from justice, or persons under felony indictment. In the case of

...duced into every national legislative session in recent years ... such laws are not unconstitutional.



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*United States* v. *Miller* (1939), the Supreme Court upheld the act. It said that such weapons have no "reasonable relationship to the preservation or efficiency of a well-regulated militia."

In 1968, Congress passed a stronger gun-control bill. It banned the mail order or other interstate sale of firearms and ammunition. Generally, it prohibited the sale of guns to out-of-state buyers, but because of the way the law was worded, this provision was relatively ineffective. Persons under the age of 18 were not allowed to purchase shotguns, rifles, or ammunition. The sale of handguns was restricted to those over the age of 21.

In general, the Supreme Court has not found any constitutional restraints on gun-control laws. The subject is, therefore, one that is left to Congress. Many proposals for national gun-control laws are introduced in the Congress each session. They range all the way from totally prohibiting the manufacture, sale, and ownership of handguns to proposals calling for some form of national registration of weapons.

### Section Review 4

1. According to the Supreme Court, what does Amendment 2 protect?
2. What reason did the Supreme Court give for upholding a ban on sawed-off shotguns and fully automatic weapons?
3. If Congress were to pass a law banning the manufacture, sale, or ownership of handguns, do you think the Supreme Court would rule that the law violated Amendment 2? Give reasons to support your answer.

## 5 RIGHTS OF THE ACCUSED ARE ASSURED BY SEVERAL AMENDMENTS

Five of the ten amendments that make up the Bill of Rights limit or prohibit the use of governmental power in dealing with persons accused of crimes. In addition, a few rights of the accused are guaranteed in the original Constitution.

### Rights of the accused are based on American values

Six ideas that have developed through American history are the basis of the rights of the accused.

1. Protection of the innocent. The American system presumes that a person is innocent until proved guilty.

2. Fair trials. No one's life or liberty should be taken without "due process of law." No one should be convicted without having a chance to have his or her story heard.

3. Democratic process. Juries are democratically chosen from the adult population. Trials are conducted openly, and the public is aware of criminal proceedings.

4. Limited governmental power. Arbitrary laws and unreasonable searches and seizures are forbidden.

5. Human dignity. No one shall be subjected to cruel, brutal, unusual, or undeserved treatment. No persons can be forced to be witnesses against themselves.

6. Privacy. Every individual has the right to privacy. Unreasonable searches and seizures and forced confessions would violate this right.

With few exceptions, there is little controversy or disagreement about these ideas. However,

Freedom Edition

# AMERICAN CIVICS

## ANNOTATED TEACHER'S EDITION

William H. Hartley
William S. Vincent

Holt, Rinehart and Winston, Inc.
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# Amendments to the Constitution

The first ten amendments to the Constitution are called the **Bill of Rights.** The Bill of Rights limits the powers of the federal government and protects the rights of the people.

The date in parentheses is the year in which ratification of each amendment was completed and in which the amendment was therefore adopted.

## AMENDMENT 1. Freedom of Religion, Speech, Press, Assembly, and Petition (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Congress may not set up an official church nor pass laws that limit freedom of religion, speech, the press, assembly, and the right to petition.

## AMENDMENT 2. Right to Keep Arms (1791)

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

The right of states to have a militia (National Guard) is guaranteed. The right of citizens to keep weapons to resist a tyrannical government is also protected.

## AMENDMENT 3. Quartering of Soldiers (1791)

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

In peacetime, troops may not take over private houses.

## AMENDMENT 4. Search and Seizure; Warrants (1791)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The government is limited in its right to search and take custody of persons and property. A **search warrant** can be issued by a judge only if there is a good reason for its use and if it describes the place to be searched and the persons or property to be seized.

## AMENDMENT 5. Rights of Persons Accused of Crime (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

A person cannot be tried for an important crime unless first **indicted**, or accused, by a grand jury. An accused person cannot be tried twice for the same crime nor forced to testify against himself or herself. No person can be deprived of life, liberty, or property except by lawful means. The government cannot take private property for public use without paying a fair price for it.



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## The Second Amendment

The Second Amendment to the Constitution guarantees Americans the **right to bear arms.** The government cannot forbid Americans to own firearms, such as handguns and rifles.

During the colonial period, Americans organized militias, or volunteer armies, to defend their communities. The militias played an important part in the American Revolution. Later, in the early years of our nation, Americans needed weapons in order to serve in the militias that were established to defend the states. The militias provided protection during emergencies, too. Many Americans believed that, without weapons, they would be powerless if the government tried to overstep its powers and rule by force. For these reasons, the right to bear arms was included in the Bill of Rights.

Today, because of the increase of crime in the United States, gun control is widely debated. Some people have demanded that guns be regulated. They say that gun control laws would lower the crime rate. Other people argue that the Second Amendment prevents the government from passing laws that limit the right to bear arms.

## The Third Amendment

The Third Amendment states that the government cannot force Americans to quarter, or give housing to, soldiers in peacetime. Under British rule, the colonists were sometimes forced to house and feed British soldiers. As a result, Americans wanted a "no quartering" right in the Bill of Rights.

## The Fourth Amendment

The Fourth Amendment protects people from unreasonable searches and seizures. This means that in most cases our persons or property cannot be searched and our property cannot be taken from us by the government.

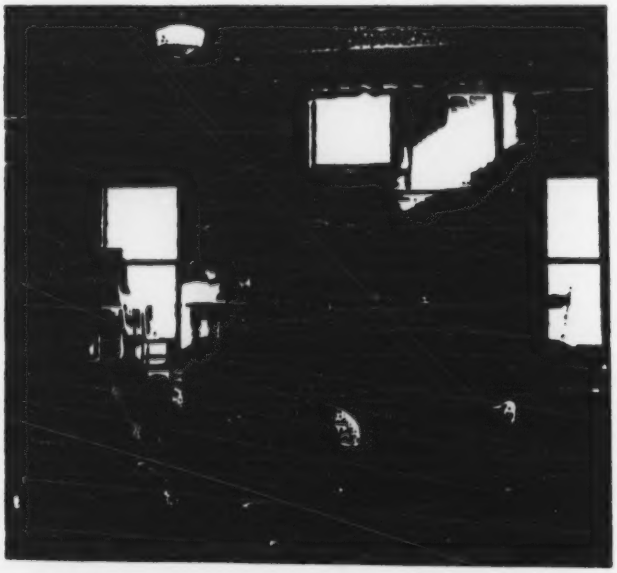
However, a search is considered reasonable if a judge has issued a **search warrant.** This is a legal document that describes the place to be searched and the persons or things to be seized. A search warrant can be issued only if there is good reason to believe that evidence about a crime will be found.

## The Fifth Amendment

The Fifth Amendment contains several provisions protecting the rights of a person accused of a crime. Before a person can be brought to trial, he or she must be **indicted,** or formally accused of a crime, by a group of citizens known as a grand jury. This protects an accused person from hasty action on the part of the government.

The Fifth Amendment also protects an accused person against **self-incrimination,** or having to testify against oneself. Furthermore, it protects people from **double jeopardy.** This means that people cannot be tried a second time for the same crime.

These citizens are attending a town meeting in Vermont to give their views and to listen to the views of other American citizens.



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# Focus on Freedom

## Debating the Meaning of the Second Amendment

Guns have played an important role in American history. Colonists used muskets to hunt food for their families and to win the American Revolution. As our country expanded westward, rifles and pistols were used for hunting game, settling disputes, and defending against cattle rustlers.

Guns are still an important part of American life. Over 70 million Americans own firearms. Americans use their guns primarily for recreation—hunting, target shooting, and collecting Many people keep guns in their homes for self-protection.

Unfortunately, firearms have a darker side. About 30,000 Americans are killed by firearms each year. Most of these deaths involve crimes. But gun accidents kill about 1,400 Americans annually. And firearms kept for self-protection often end up injuring or killing friends or family members instead of warding off intruders.

Because so many Americans are hurt and killed by firearms, many citizens want the government to restrict gun ownership. Other people argue that gun ownership is a basic right guaranteed to all Americans. At the center of this hotly debated issue is the Second Amendment to the Constitution.

As the colonists in this engraving illustrate, firearms were a common sight in early America.

### "A Well Regulated Militia"

The Second Amendment states that "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

This amendment allows each state to form and arm its own "well regulated militia," what we know today as the National Guard. National Guard units maintain the internal security of each state during emergencies. The amendment also gives local, state, and federal governments the right to establish and arm security forces, such as police departments.

Few people would argue against giving police and military officials the right to use weapons to maintain the peace and security of our nation. But what about average citizens? Does the Second Amendment give everyone the right to own and use guns?

## Interpreting the Constitution

In 1981, the town of Morton Grove, Illinois, became the first town to completely ban handguns. The United States Court of Appeals ruled that the Morton Grove law did not violate the Second Amendment, and the Supreme Court refused to hear the case, allowing the lower court's ruling to stand.

The Morton Grove decision is in keeping with the judiciary's view of the Second Amendment. In fact, every Supreme Court and federal court decision involving the amendment has held that the amendment does not *guarantee* the right of individuals to own or to carry arms. Thus, gun control laws are constitutional.

The federal government, most states, and many communities have restrictions on gun ownership. Still, many people disagree with the courts' rulings, and are challenging gun control laws.

Both the supporters and the opponents of handgun ownership believe strongly in their positions. Because of this, the topic is hotly debated.

## Battling Over Gun Control

America's gun battle is being fought most vigorously in Washington, D.C., where opposing groups are fighting to win the votes of Congress. The National Rifle Association (NRA) is a highly vocal supporter of gun ownership. The NRA's 2.7 million members argue that the Second Amendment guarantees Americans "the right to keep and bear arms."

Opposing the NRA are a number of smaller groups that are working for laws to restrict gun ownership. Among the most prominent of these groups is Handgun Control. Handgun Control argues that stronger gun control laws, by keeping guns out of the hands of criminals, would reduce the number of Americans killed and injured by guns each year.

A[illegible] to Focus on Freedom can be found in the Teacher's Pages for this Se[illegible]

### Questions to Consider

1. What role have guns played in American life?
2. Why do some people support gun control laws? Why do others oppose these laws?
3. Find out what, if any, gun control laws exist in your community or state. Are they too strict? Not strict enough? Explain.